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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #12929
RESOLUTION E-4652
May 15, 2014

R E S O L U T I O N

Resolution E-4652. Southern California Edison Company (SCE) requests approval of proposed revisions to its Station Power Self-Supply Schedule (Schedule SPSS) in light of FERC's August 30, 2010 and February 28, 2011 orders which now allow states to use their own station power load-netting methodologies for assessing certain retail charges under the applicable retail tariffs.

PROPOSED OUTCOME: This resolution approves with modifications SCE's proposed revisions to the Station Power Self-Supply Schedule (Schedule SPSS) to assess certain retail charges on station power load of generators that participate in the California Independent System Operator's Station Power Protocol. SCE proposed to make the revised Schedule SPSS effective on June 1, 2006. This resolution adopts an effective date of December 18, 2012.

SAFETY CONSIDERATIONS: This resolution authorizes tariff changes related to the use of station power by non-utility-owned generating units. These generating units remain subject to all of the applicable federal, state and local safety regulations. No incremental safety impacts will result from this resolution.

ESTIMATED COST: To the extent that generators on Schedule SPSS were paying less than the Otherwise Applicable Tariffs' rates, requiring them to pay the Otherwise Applicable Tariffs in accordance with this resolution will lower the total amounts that SCE needs to collect from other ratepayers. The generators will make back-payments to SCE starting from December 18, 2012 (for all periods they were on Schedule SPSS from December 18, 2012), which would further lower the total cost that SCE needs to collect from other ratepayers.

By SCE Advice Letter 2576-E-A, filed on November 18, 2011.

SUMMARY

This resolution approves with modifications SCE's proposed revisions to the Station Power Self-Supply Schedule (Schedule SPSS) to assess certain retail charges on station power load for generators that participate in the California Independent System Operator's Station Power Protocol. SCE proposed to make the revised Schedule SPSS effective on June 1, 2006. This resolution instead adopts an effective date of December 18, 2012.

Prior to the California Independent System Operator's (CAISO's) 2006 implementation of a revised Federal Energy Regulatory Commission (FERC) policy on station power, Southern California Edison Company (SCE) charged customers for station power under SCE's Otherwise-Applicable Tariffs (OATs).[1] That changed on April 1, 2006, when, pursuant to a FERC order, the CAISO implemented the Station Power Protocol (SPP) tariff. The FERC-ordered SPP tariff specified the circumstances under which a generator's station power load could be netted against generation output. The SPP tariff by operation deemed such netted load to not be a retail sale of electricity, and thus a generator could avoid paying retail charges previously paid under the otherwise applicable tariffs for their station power load. SCE challenged FERC's approval of CAISO's SPP tariff in the United States Court of Appeals for the District of Columbia Circuit, which on May 4, 2010, vacated FERC's order approving the CAISO's SPP tariff and remanded the matter back to FERC for further proceedings consistent with its opinion. FERC then issued an Order on Remand on August 30, 2010,

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[1] This resolution will use the term Otherwise Applicable Tariff, or "OAT," to refer to station power customers' retail tariffs both before CAISO's SPP and also to the tariff structure that will be in effect going forward. Prior to CAISO's SPP, generators would take station power under Schedule TOU-8 (or other retail tariff) and Schedule S-Standby. But now those two schedules have been combined into one schedule. If a generator's monthly Maximum Demand is expected to be 500 kW or below then the generator will take service under Schedule S-Standby 500 kW and Below. For generators with higher expected Maximum Demand they would take service under either 1) Schedule TOU-8-S: Time-of-Use – General Service – Large – Standby, or 2) Schedule TOU-8-RTP-S: Time-of-Use – General Service – Large, Real Time Pricing, Standby, as applicable. Since the CPUC is returning SPP participants to the same basic tariff structure that was in effect prior to CAISO's SPP, it is easier to use "OATs" to collectively describe both the station power tariffs that were in effect prior to SPP, and also to the tariff structure that will be in effect going forward. When SCE files its Tier 1 Advice Letter in compliance with Ordering Paragraph 4 of this resolution, SCE's use of the term "Otherwise Applicable Tariff," or "OAT," should be consistent with this resolution's use of the term.

that acknowledged the D.C. Circuit Court of Appeals' decision and concluded that states may approve their own station power load-netting methodologies for assessing state jurisdictional retail sales charges. In light of FERC's August 30, 2010, order, SCE filed Advice Letter 2576-E-A to revise its Schedule Station Power Self-Supply (SPSS). Thereafter, Calpine and others requested FERC to reconsider its August 30, 2010 Order on Remand. On February 28, 2011, FERC denied this request and issued an Order Denying Rehearing. Calpine appealed FERC's Order Denying Rehearing to the D.C. Circuit Court of Appeals, but on December 18, 2012, the court upheld the FERC order. All challenges to FERC's Order on Remand being resolved and final, we now issue this resolution approving SCE's Advice Letter 2576-E-A with modifications.

Generator customers electing the SPP tariff have been paying SPSS rates, which are not final Commission-approved rates, since June 1, 2006, and they have been on notice of SCE's challenge to the FERC approval of the SPP tariff and of the possibility that SCE's Schedule SPSS's allowable charges may retroactively include retail charges due under the OATs if SCE prevailed on judicial review. The Commission recognizes that the generators were forced to confront practical commercial decisions while the SPP tariff was under review during a long, protracted litigation. As such, this resolution finds that since the station power related issues were the subject of a long protracted litigation and were not finally resolved until December 18, 2012 when the D.C. Circuit Court of Appeals upheld the FERC's Order Denying Rehearing, and since customers on Schedule SPSS are now being required to pay retail charges under their OATs, it is reasonable to require the generators on the CAISO's SPP tariff to pay the otherwise applicable retail charges (under the OATs) beginning from December 18, 2012 for all times such generators were on CAISO's SPP tariff.

BACKGROUND

Generating stations consume some electricity in order to start up the plant to generate electricity. The generating station may have some other auxiliary load as well.

While the main purpose of a generating facility is to produce electricity and to provide power to the transmission grid, some amount of electricity is needed to get the plant started up to operate the generating facility. There is also some auxiliary load at the generating stations related to fuel-processing machines, cooling systems, control devices, and office equipment. Electricity consumed by the generating facility is called "station power" load. Prior to the CAISO's implementation of its SPP tariff in 2006, any on-site station power load that exceeded on-site generation – typically measured in 15-minute metering intervals – was considered retail load.

Under the retail tariff prior to CAISO implementation of the Station Power Protocol (SPP), the responsible utility assessed transmission and energy sales and other charges to station power load under the otherwise applicable tariffs.

Under the retail tariff prior to the CAISO implementing the SPP on June 1, 2006, any on-site station power load that exceeded on-site generation during the standard and established 15-minute metering interval was considered retail load and was assessed applicable retail energy and transmission charges under the Otherwise Applicable Tariffs (OATs).

The CAISO SPP introduced monthly netting and re-characterized station power load.

In response to generators' complaints and FERC's instructions,[2] the CAISO developed the SPP Tariff.[3] The SPP Tariff became effective on April 1, 2006. The SPP was an optional program for generators, and some generators voluntarily participated in the CAISO SPP and became the SPP Generators starting from June 1, 2006. Under the CAISO SPP, regardless of the power consumption shown in the established 15-minute interval meter readings, generators were allowed to net their station power load against their on-site and off-site generation on a monthly basis. Consequently, by operation of the CAISO SPP, retail load subject to state jurisdictional retail energy and transmission charges was determined on a monthly netting basis.

Through the SPP, CAISO re-characterized the station power load of the SPP Generator owner's station power portfolio into the following three categories called "On-Site Self-Supply"; "Remote Self-Supply; and "Third Party Supply.

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[2] *Duke Energy Moss Landing LLC*, 109 FERC ¶ 61,170 (2004), *reh'g denied*, 111 FERC ¶ 61,451 (2005).

[3] On April 18, 2005, CAISO filed Amendment No. 68 to its Tariff proposing to conform its tariff to FERC's SPP. (*California Independent System Operator Corp.*, FERC Docket No. ER05-849.) On June 22, 2005, FERC conditionally accepted in part and rejected in part CAISO's proposed Amendment 68. (*California Independent System Operator Corp.*, 111 FERC ¶ 61,452 (2005).

"On-Site Self-Supply": Within a SPP Generator owner's portfolio, if any individual generating facility's output is more than its station power load in a given month, the CAISO SPP tariff deems the generating facility's station power load as "On-Site Self-Supply. For the "On-Site Self-Supply" portion of the station power load, the CAISO exempts transmission access charges based on the notion that station power load is "On-Site Self-Supplied" and does not use any transmission facilities if it is net positive in energy on a monthly basis. CAISO also introduced a new concept that this "netted" portion of the station power load would be treated as wholesale load (despite the fact that FERC refused to call this a wholesale energy sales transaction). As a result, CAISO assessed wholesale energy charges directly to the SPP Generator owner.

"Remote Self-Supply": For a SPP Generator owner who has a portfolio of generating facilities at more than one location, if the combined station power load is less than the combined generation in the portfolio in a given month, CAISO deems the station power load as either "On-Site Self-Supply" or "Remote Self-Supply". For transmission access charges, CAISO treats the "Remote Self-Supply" portion of the station power load as retail load and bills the transmission access charges to the responsible utility. However for energy charges, CAISO treats the "Remote Self-Supply" portion as wholesale load and bills the wholesale energy charges directly to the SPP Generator owner.

"Third Party Supply": For a SPP Generator owner's portfolio, if the combined station power load is in excess of combined generation in the portfolio in a given month, the difference is considered to be supplied by a third party and so is called the Third Party Supply. CAISO treats this portion as retail load and bills the transmission charges and energy sales charges to the responsible utility. The responsible utility is then allowed to assess incremental retail charges for its incremental retail services.

SCE challenged the CAISO SPP tariffs and FERC'S underlying rationale.

SCE continuously challenged the CAISO's tariff modification and FERC rulings on station power policy. After FERC denied SCE's request for rehearing,[4] SCE on December 12, 2008 appealed the FERC order approving the CAISO SPP tariff at the D.C. Circuit Court. SCE asserted that with the CAISO allowing monthly

[4] 125 FERC ¶ 61,072 (October 17, 2008).

netting and cross netting among generation facilities in different locations, SCE would end up under-collecting revenues for the retail services it provided to the SPP Generators. In other words, SCE argued that it was providing certain retail services to SPP generators but that, because of FERC's SPP framework, SCE was unable to charge and be compensated for providing those retail services. The main issues SCE brought up were: 1) whether FERC can preempt state jurisdiction over retail energy sales, and 2) whether FERC has authority to set the netting methodology for the retail energy sales.

On June 4, 2009, SCE filed Advice Letter 2008-E-B, while waiting for the D.C. Circuit Court decision.

While waiting for the D.C. Circuit Court decision, SCE, as required by FERC, filed a new Schedule SPSS through Advice Letter (AL) 2008-E-B to accommodate the CAISO implementation of the SPP (henceforth the Original FERC-Required Tariff). With the implementation of the FERC required SPP tariff, some of the retail charges applicable to station power loads were to be eliminated retroactively from June 1, 2006. However, since the appeal to the D.C. Circuit Court was still pending, SCE, in the AL 2008-E-B filing, reserved its rights to retroactively impose the CPUC jurisdictional retail charges (due under the OATs) it was being compelled by FERC to eliminate, if SCE prevailed in court.[5] The Commission approved AL 2008-E-B (Schedule SPSS) subject to the outcome of the D.C. Circuit Court's review of FERC's approval of CAISO's SPP tariff.

On May 4, 2010, the D.C. Circuit Court vacated and remanded FERC's approval of CAISO's Station Power Protocol.

In an opinion issued May 4, 2010, the D.C. Circuit Court vacated and remanded FERC's approval of CAISO's SPP tariff. Under its FERC approved SPP tariff, CAISO had determined that station power load was to be treated as a wholesale transaction even though FERC never explicitly characterized it as that. The court discussed that, in order to sustain CAISO's SPP tariff, FERC needed to explain

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[5] In Advice Letter 2008-E-B, SCE stated, "Due to two pending consolidated Court of Appeal cases involving station power, language is included in the proposed tariff to allow the charges applicable under Schedule SPSS to be modified in the event the Court reverses FERC's policy on station power." (SCE Advice Letter 2008-E-B (June 4, 2009) at 5.) The proposed tariff stated, "The charges applicable to SPP Participants remain subject to change pending judicial review." (*Id.* at SCE Proposed Tariff Schedule SPSS, Sheet 2, Rates, section 5.)

and justify its authority to determine that a retail transaction had not taken place.[6] While the D.C. Circuit recognized FERC's "undeniable right . . . to determine how much electricity generators deliver to and take from the grid for transmission purposes,"[7] it found that this authority did not by itself "empower" FERC to "conclude that a retail sale has not taken place."[8] The D.C. Circuit concluded that, while FERC had established an otherwise appropriate netting methodology for the purposes of assessing CAISO transmission charges, FERC had exceeded its authority when it used that same netting methodology to determine whether a retail sale had occurred. The D.C. Circuit Court suggested that it could be entirely appropriate for the netting methodology used to assess FERC jurisdictional charges to be different from the netting methodology used to assess state jurisdictional retail charges, but the D.C. Circuit Court did not further discuss the issue of different netting methodologies.[9]

On July 12, 2010, the CPUC approved Advice Letter 2008-E-B, including the attached tariff sheets for Schedule SPSS.

On July 12, 2010, the CPUC approved the Original FERC-Required Tariff as filed in SCE's Advice Letter 2008-E-B, including the attached tariff sheets for Schedule SPSS, and made it effective retroactive to June 1, 2006. In Advice Letter 2008-E-B, SCE (pursuant to FERC's order upholding CAISO's SPP tariff[10]) exempted SPP customers who are "neither purchasing at retail nor using local distribution facilities"[11] from paying certain transmission, distribution, and non-bypassable charges included in previously-filed tariffs.

Under the Original FERC-Required Tariff, station power load is netted monthly against energy that is from "On-Site Self-Supply" or "Remote Self Supply". The netted On-Site Self Supply portion of the station power load is exempted from transmission charges and retail energy sales charges. The netted "Remote Self-Supply" portion of the station power load is only exempted from retail energy

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[6] *So. Cal. Edison Co. v. Federal Energy Regulatory Com.* (D.C. Cir. 2010) 603 F.3d 996, 999-1001.

[7] *Id.* at 997-998.

[8] *Id.* at 1000.

[9] *Id.* at 1002.

[10] 125 FERC ¶ 61,072 (2008) at P 72.

[11] Advice Letter 2008-E-B, p. 4.

sales charges; CAISO assesses a share of the transmission access charge to "Remote Self-Supply."

On August 30, 2010, FERC issued an Order on Remand that allowed states to use their own netting methodologies for assessing retail non-transmission charges. Calpine and other SPP participants requested a rehearing, but on February 28, 2011, FERC issued an Order Denying Rehearing.

In accordance with the D.C. Circuit Court of Appeals' remand, FERC on August 30, 2010, issued an order on remand[12] stating that, while FERC determines the amount of station power load that is transmitted on the FERC-jurisdictional transmission grid, the states determine the amount of station power load that is sold in state-jurisdictional retail sales. FERC further stated that states, in determining the amount of station power that is sold at retail, need not use the same netting methodology that FERC uses to determine the amount of station power load that is transmitted in interstate commerce. Calpine Corporation (Calpine) petitioned for FERC's reconsideration of its order on remand, and on February 28, 2011, FERC denied Calpine's rehearing request.[13]

Calpine and other SPP participants appealed the FERC order to the D.C. Circuit Court of Appeals. On December 18, 2012, the D.C. Circuit Court of Appeals upheld the FERC order.

Calpine and other SPP participants appealed to the D.C. Circuit Court of Appeals for review of the FERC order denying Calpine's rehearing request of the FERC Order on Remand. SPP participants argued that the court's ruling in *Southern California Edison Co. v. FERC* (D.C. Cir. 2010) 603 F.3d 996, only rejected FERC's jurisdiction to determine whether a retail sale of energy had occurred when that determination was based on FERC's jurisdiction over transmission. But, SPP participants argued, *Southern California Edison* did not preclude FERC from considering alternative theories for claiming jurisdiction (such as FERC's jurisdiction over wholesale energy sales), and FERC's failure to consider

[12] 132 FERC ¶ 61,183 (2010) (FERC Order on Remand).

[13] 134 FERC ¶ 61,151 (2011).

alternative bases for upholding the netting policies established for other states is an arbitrary and capricious departure from those policies.[14] On December 18, 2012, the D.C. Circuit Court affirmed the FERC Order on Remand.[15] The court responded to the SPP participants' argument by noting that none of the alternative theories for jurisdiction put forth by the petitioners was viable because none of those theories was actually relied upon by FERC.[16]

SCE Proposal as Filed in Advice Letter 2576-E-A

On April 22, 2011, in responding to the FERC orders, SCE filed Advice Letter (AL) 2576-E.SPP Generators protested the filing. On November 18, 2011, SCE filed AL 2576-E-A, which is before us now.

In AL 2576-E-A, SCE proposed, among other things, the following modifications to its Schedule SPSS:

1. Effective June 1, 2006, return of SPP Generators to the CPUC jurisdictional Otherwise Applicable Tariffs that were in effect before SCE implemented the Original FERC-Required Tariff. The CPUC jurisdictional tariffs determine applicable retail charges based on 15-minute interval metering.
2. Exemption of the "On-Site Self-Supply" portion of the station power load from FERC jurisdictional transmission access charges, similar to the CAISO SPP tariff that exempts this portion of the station power load from these transmission charges.
3. Make the SCE-propose Schedule SPSS effective from June 1, 2006, and provide a credit to SPP Generator owners for the payments they made directly to the CAISO during the period from June 1, 2006, to the Commission approval date of the filed Schedule SPSS.
4. A provision that the charges applicable to station power load of the SPP Generators are subject to change if judicial review of relevant FERC orders is sought.

[14] *Calpine Corp. v. FERC* (D.C. Cir. 2012) 702 F.3d 41, 45.

[15] *Id.* at 50.

[16] *Id.* at 46.

NOTICE

Notice of AL 2576-E-A was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with General Rule 7.1 of General Order 96-B.

PROTESTS

SCE's AL 2576-E-A was timely protested by Calpine Corporation (Calpine), High Desert Power Project, LLC, Independent Energy Producers Association (IEP), NRG Energy (NRG), Western Power Trading Forum (WPTF), and jointly by the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC), collectively referred to here as Protestants. The following is a summary of the major issues raised in the protests:

1. The AL process should not be used for dealing with the issues related to station power load. Instead, the CPUC should decide on a universal charging methodology for station power load through a rulemaking.
2. The CPUC has not yet established its policy on the netting methodology or the rate components for state-jurisdictional station power loads.
3. SCE neither purchased, sold, nor provided any services associated with the original or any revised version of Schedule SPSS; in particular, SCE has not provided services that warrant imposing retail charges on load served by "Remote Self Supply."
4. Where a generator obtains energy for its station power load from another generator under common ownership, there is no retail sale and the various charges applicable to retail sale should not be imposed on such self-supply.
5. The retroactive application of the revised tariff would lead to double payment. SCE should be required to refund the charges already collected from SPP generators if such charges are determined by a reviewing court to be improper. The retroactive application of a revised Schedule SPSS is also unjust, unreasonable, and discriminatory because any retroactive changes to an approved tariff rate are illegal and contrary to established CPUC policy.

SCE Reply

SCE replied to the protests on December 15, 2011. The following is a summary of the SCE Reply:

1. The AL is an appropriate vehicle to modify the Original FERC-Required Tariff. The CPUC previously recognized that there was no need for a rulemaking on station power services.
2. Based on the retail metering, any station power load not supplied from the on-site generator is a retail sale and thus retail charges should be assessed. The CPUC has the authority to assess non-bypassable charges if there is retail distribution service or a retail energy sale to a station power load.
3. In the case of "Remote Self-Supply", there is either (a) a retail sale of energy, or (b) usage of the distribution system, or (c) both. As for situation (b), SCE is not aware of any time when generators under common ownership had self-scheduled their energy to serve their station power load.[17]
4. The CPUC previously adopted and implemented netting period rules and policies for station power load.
5. The filed rate doctrine does not prohibit SCE from changing the station power tariff to reflect the outcome of judicial review of FERC's orders. Tariff modifications based on judicial relief do not violate the rule against retroactive ratemaking. Also, appropriate notice of the potential rate changes was provided.

A draft resolution (Resolution e-4532) was mailed on august 13, 2012. Comments and reply comments were received on that draft resolution in a timely manner. However, the draft resolution was withdrawn and is superseded by this resolution.

On August 13, 2012, the Energy Division mailed Draft Resolution E-4532 concerning SCE's Advice Letter 2576-E-A. Comments on the August 13, 2012 Draft Resolution were timely submitted by SCE, Calpine Corporation, Independent Energy Producers Association (IEP), Cogeneration Association of California and Energy Producers and Users Coalition, and Western Power Trading Forum; SCE timely submitted reply comments on September 5, 2012. On February 1, 2013, IEP mailed a "proposal for modifying the CPUC's current approach to Station Power" to the Energy Division Director. This draft Resolution has taken into account the comments and reply comments on draft resolution E-4532 even though that resolution was withdrawn.

[17] *See* Reply to Protests to SCE Advice Letter 2576-E-A at 16.

On April 14, 2014, Energy Division mailed a new Draft Resolution E-4652, which superseded the August 13, 2012 version.

DISCUSSION

Advice Letter filing is an appropriate vehicle for determining the issues presented here.

When SCE implemented the FERC required CAISO station power tariff (Schedule SPSS), it did so through the filing of an advice letter (advice letter 2008-E-B). SCE is now proposing to return generators to the otherwise applicable CPUC jurisdictional station power tariffs (OATs) through the same advice letter process to address FERC orders on remand and reinstate Schedule SPSS. The tariff modification is therefore allowed through the advice letter filing.

The proposed Schedule SPSS as filed does not introduce any new netting methodologies. It only proposes to return generators' station power load to the CPUC jurisdictional retail tariff schedule that was in effect before SCE implemented the Original FERC-Required Tariff.

Monthly netting does not result in a true measure of station power load supplied by the utility because it can zero out much of the power that was actually supplied by the responsible utility when the generating facility needed that power. 15-minute interval metering is more appropriate.

The proposed Schedule SPSS as filed does not introduce any new netting methodologies; rather it proposes to resume applying the CPUC jurisdictional Otherwise Applicable Tariffs (OATs) for station power load which use 15-minute interval metering. The generators who did not opt for the FERC required CAISO station power tariff have been on that tariff all along.[18]

[18] WPTF has protested on the grounds that the CPUC has not considered what should be the appropriate netting period. (Western Power Trading Forum's Comments on Draft Resolution E-4532, p. 1.) The issue of what should be the appropriate netting period appropriately is not before the Commission at this time. The CPUC is simply returning SPP Participants to the CPUC jurisdictional tariffs (the OATs) and applying the 15-minute interval metering that has been a well-established practice long before the Original FERC-Required Tariff was submitted or approved.

The SPP tariff that was implemented by the CAISO under a FERC mandate allowed generators to net the station power load over a month. So, even when a generator consumed a lot of station power load (when it was not generating power at all or was not generating enough during the start-up process), due to the netting at the end of the month, it could show that the generator did not consume station power at all from a retail perspective. Billing based on monthly netting thus hides the fact that this power was consumed and makes it difficult for the responsible utility to bill the retail power it supplied. Because monthly netting can zero out much of the station power load, SPP Generators were able to argue that they did not receive that power and should not be billed. The fact is that, as the responsible Load Serving Entity (LSE), SCE is responsible for providing retail services for that load and should be allowed under CPUC approved tariffs to bill that load for such retail services.

The CPUC jurisdictional station power tariff in effect before the CAISO's SPP implementation used 15-minute interval metering. 15-minute interval metering more accurately reflects the electric power situation as power demand needs to be constantly balanced with power supply. To maintain a safe and reliable power system and to avoid blackouts, electric load and supply must be continuously balanced. It is because of the need to continuously balance load and resources that the CAISO's real time energy dispatch interval is five (5) minutes and its automatic generation control issues ramp up or ramp down instructions every four (4) seconds.

Given the need for continuous balancing, billing based on monthly netting does not accurately reflect the amount of station power services provided. Monthly netting would often result in underestimating the external power needs of a generating facility. It does not show all the time periods when the power was being brought in from the outside and the responsible utility's transmission/distribution/generation system was used for supplying that power. Use of monthly netting methodology to assess charges for services is also inconsistent with the development of smart grid and for managing intermittent or renewable resources.

Independent Energy Producer's (IEP's) claim that there is no reliability issue here is not true. With monthly netting, there is not a sufficient incentive for a generator to reduce station power consumption at peak time because the power does not get billed at retail peak rates even though the utility has the obligation to deliver the power to the station

SPP participants have claimed that 15-minute netting puts them at a competitive disadvantage versus utility-owned generators. But this argument misunderstands the cost structure of utility-owned generators vis-à-vis merchant generators.

SPP participants argue that a 15-minute netting period would put them at a competitive disadvantage when utility-owned generators are not required to similarly pay retail charges for their station power. But this illustrates a misconception on several levels. First of all, it is wholly outside the scope of this resolution to address broad policy concerns over the similar treatment of utility-owned and merchant generators. Secondly, there is nothing in the Public Utilities Code, nor in the FERC Orders on Remand, nor in the D.C. Circuit Court rulings that would require the CPUC to subject utility-owned generators to similar rules as merchant generators. Nor do SPP participants attempt to cite any authority that would require the Commission to address this issue. Thirdly, the SPP participants' argument fundamentally misunderstands the fact that utility-owned generators operate under a ratemaking structure that is very different from merchant generators. Utilities are subject to the Commission's comprehensive rate regulation. Utilities' profits are limited by the Commission-approved rate of return, and ratepayers pay for all of the utilities' prudently incurred costs including their depreciation and taxes, just to name a couple of differences. Generators, on the other hand, face no such legal and regulatory limitation to their profit-making, but are not made whole when they lose money. In other words, the risk and reward calculus is entirely different for utility-owned generators and for merchant generators.

On a related topic, several SPP participants, such as IEP, protested that the CPUC should consider alternative netting regimes that might be more fair to merchant generators. But these protests, too, are wholly outside the scope of this resolution. Furthermore, inventing a new netting scheme is a substantial policy question for which the informal advice letter process is an inappropriate vehicle. This resolution does *affect* the netting period in that it returns SPP participants to the 15-minute netting period, but this is a far more limited action because the CPUC is simply returning SPP participants to a netting regime that was previously approved, properly approved, and would still be in existence today, but for the now-judicially-overturned actions taken by FERC.

SPP participants claim that they purchased their energy from the CAISO market and that SCE did not supply them energy, thus they cannot be charged a retail rate by SCE. However their claim is based on monthly netting which zeroes out much of the power that was delivered to them by the utility in real

time. As the responsible load serving entity, SCE has the obligation to deliver power for station power load purposes and must recover applicable retail charges for power delivered.

SPP Participants claim that it would be unjust to charge them retail rates when SCE did not supply the power because it was taken off the CAISO grid. However, SCE has an obligation to serve load. SCE must ensure that there is adequate supply on standby at all times, ready to serve the generator in case of an outage. This is a retail service for which SCE as the responsible LSE, must recover applicable retail charges for retail services provided to the generating station within any 15-minute metering interval.

When station power load supplied by off-site generation uses the utility's transmission/distribution/generation system, it should pay applicable retail charges.

Before the SPP implementation, station power load was metered on a 15 minute interval basis and treated like any other retail load. The CAISO billed any load-based services procured on behalf of such load to the responsible Scheduling Coordinator (i.e., a responsible utility), and did not bill such charges directly to the SPP Generator owners. The responsible utility's bill to the generator for its station power load, in turn, included all applicable retail charges approved by the CPUC. SCE's proposed station power tariff is reasonable because it would enable SCE to bill for all station power load that was consumed by the generating station within any 15-minute metering interval. The 15- minute interval metering allows a more accurate determination of what part of the station power load was "On-Site Self-Supply", what part was "Remote Self-Supply", and what part was "Third Party Supplied". Under the Original FERC-Required Tariff, much of the station power load characterized as "On-Site Self-Supply" is an artifact of the monthly netting.

Protestants' allegation of retroactive ratemaking is without merit because the original FERC-Required Tariff was expressly "subject to change pending judicial review" of the FERC orders, and SCE is seeking to back bill for Commission approved final rates that would have been in effect but for the Original FERC-Required Tariff.

SCE proposes to make Advice Letter 2576-E-A effective from June 1, 2006 (including the unpaid retail charges). SPP participants argue against back billing on the grounds that it would constitute impermissible retroactive ratemaking. However, as the protestants are well aware, when SCE filed the Original FERC-

Required Tariff to implement FERC's SPP, Schedule SPSS was approved by the CPUC on July 12, 2010, effective back to June 1, 2006. Therefore, SPP participants are arguing both that (1) the SPSS tariff could be properly applied retroactively because of the FERC's original orders but (2) the previously applied OATs cannot be made effective back to June 1, 2006 even though those FERC orders were overturned.

The protestants contend that the Draft Resolution misapplies the rule against retroactive ratemaking. In support of this position they cite language originally contained in D.92-03-094 (1992) 43 Cal. P.U.C. 2d 596, 600:

> It is a well-established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for <u>previously</u> incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking. (Emphasis in original).

Protestants do not explain why this long-standing practice is relevant here. The Commission does allow recovery of just and reasonable costs incurred in the past if the utility notified the Commission before incurring those costs that it was going to set up a memorandum account and will seek to recover a category of expense not authorized in its prior rates, or where the utility believes that the amount of costs for a particular kind of expense is very different from the amount already authorized. In this case, the utilities had provided a notification to the generating customers through their tariffs that rates were subject to change back from June 1, 2006 pending the resolution of judicial review of FERC's SPP. In this case, SCE is seeking to reinstate previously established Commission-approved rates, now that the FERC order requiring different rates has been overturned.

Most importantly, when the Commission approved the Original FERC-Required Tariff, the Commission did not approve final rates, but instead approved rates that were in the tariff made expressly "subject to change pending judicial review" of the FERC orders.[19] Just as pre-established memorandum accounts put the Commission and the utility's customers on notice that the utility will later seek to recover those expenditures, SCE's Schedule SPSS tariff notified the participants that those SPSS rates could be modified later on, based on the outcome of the pending court cases.[20] As SCE explained in Advice Letter 2008-E-B, "[d]ue to two pending consolidated Court of Appeals cases involving station power, language is included in the proposed tariff to allow the charges applicable under the Original FERC-Required Tariff to be modified in the event the Court reverses FERC's policy on station power." As such, the Original FERC-Required Tariff was never the final Commission approved rates but was always subject to adjustment depending on the outcome of the federal court of appeals challenges. Therefore, by this advice letter, SCE is requesting only that it be allowed to implement those rates and back bill for past underpayments of those rates previously authorized by the Commission to be charged in the absence of the now-overturned Original FERC-Required Tariff.

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[19] SCE Tariff Schedule SPSS, Sheet 2, Rates, section 5 in SCE AL 2008-E-B. https://www.sce.com/NR/sc3/tm2/pdf/2008-E-B.pdf.

[20] Indeed, protestants were fully aware this could happen. In their briefs to the D.C. Circuit Court they argued that allowing the state to define the retail rates would be unfair because it would subject them to retroactive retail charges provided for in the utilities' tariffs:

Calpine's brief stated, "after the [FERC] accepted the Station Power Protocol, each of the local utilities had inserted 'Special Conditions' into their retail tariffs permitting utilities to impose retroactive retail charges on generators for station power service in past periods depending on the outcome of Southern California Edison." (Calpine's Initial Brief to the D.C. Circuit in Case 11-1122 at page 32.)

Dynegy also stated, "The SPSS tariffs can be read as having imposed on generators a liability for retail charges 'consistent with the DC Circuit appeal,' for the period between the effective date of a generator's Station Power Portfolio, which could go back as far as April 1, 2006, and the date that new CPUC 'clarifying tariffs' go into effect." (Dynegy, Calpine Rehearing Request, Dkt. ER05-849 at 23-25.)

NRG similarly admitted, "The retail station power tariffs approved by the California Public Utilities Commission ('CPUC') specify that entities taking station power service remain liable – back to the date generators first availed themselves of the CAISO's Station Power Program – for retail station power charges if the utilities were successful in their challenge to the Station Power Program." (NRG Rehearing Request, Dkt ER05-849 at 22.)

The Commission rejects SCE's proposal to make Schedule SPSS filed in this advice letter effective June 1, 2006. The revised Schedule SPSS should be effective from December 18, 2012, because that is the date as of which generators on CAISO's SPP tariff knew with certainty that they needed to price the power they were selling based on their paying SCE its otherwise applicable retail rate for station power.

SCE proposes to make advice letter 2576-E-A effective from June 1, 2006. SCE argues that FERC overstepped its jurisdiction and, but for those actions SCE would have been charging SPP participants under their Otherwise Applicable Tariffs (OATs) since June 1, 2006. SCE further argues, as explained above, that it had provided notice to CAISO SPP-Participants that these charges would be levied, and thus should be allowed to collect these charges from SPP participants from June 1, 2006, onward. SCE understands that SPP participants claim that they should not be subject to any previously approved retail charges, but SCE argues that such an outcome would fail to recognize the fact that SCE prevailed in its suit.

SPP participants assert that allowing any previously approved retail charges would amount to retroactive ratemaking and thus no charges should be allowed. This argument has been discussed and rejected above.

We reject SCE's proposed date of June 1, 2006, even though granting that request would not violate the rule against retroactive ratemaking, as discussed above. The SPP participants sold power into competitive markets. In order to competitively price their energy, SPP participants had to determine what their costs were. It is reasonable to assume that in bidding power into these competitive markets, the generators priced their energy with reference to the rates they were actually paying, as contained in the Original FERC-Required Tariff and the CAISO's SPP Tariff, not based on the higher retail rates contained in SCE's Otherwise Applicable Tariffs (OATs). Rebilling these customers by applying SCE's OATs all the way back to June 1, 2006, would not be consistent with how competitive markets actually work. The issue was finally settled on December 18, 2012, when the D.C. Circuit Court of Appeals denied Calpine's appeal. At that point, it was no longer reasonable for SPP participants to continue to rely on the Original FERC-Required Tariff and the CAISO's SPP Tariff, in pricing their power. Therefore, it is fair and reasonable to make SCE's Revised Schedule SPSS effective beginning on December 18, 2012.

Making the Otherwise Applicable Tariff effective on December 18, 2012 does not disadvantage SCE. Because of the way in which SCE's balancing accounts work, SCE will still recover in CPUC-authorized rates, from all the rest of its customers, the costs not recovered from SPP generators prior to December 18, 2012.

To the extent that generators on the CAISO's SPP tariff paid wholesale energy charges to the CAISO in the past, we authorize SCE to provide SPP generators a credit for those charges starting on December 18, 2012.

In the advice letter, SCE proposes to make the implementation of Otherwise Applicable Tariff (OATs) effective from June 1, 2006. Acknowledging that the generators on the CAISO's SPP tariff had paid wholesale energy charges to the CAISO after June 1, 2006, SCE proposes to give them a credit for those payments so the generators are not double charged for any power. We authorize SCE to provide a credit for those charges starting on December 18, 2012, which is the date they will be paying charges under the SCE's tariff approved in this resolution. To be eligible for this credit, the generators must present proof of the wholesale energy charges paid to the CAISO within 90 days of the effective date of this resolution.

In re-billing SPP customers, SCE should provide the detail of the calculation necessary to determine how the back charges are determined.

SPP Participants should be able to see how SCE calculated the back billed charges to see if there are any billing discrepancies. SPP Participants have requested workshops on this issue, but workshops could take a significant amount of time and would result in unnecessary delay. This is essentially a billing issue between SCE and generators and can be handled through SCE's existing tariffs.

SCE should remove the provision stating that this resolution is subject to change pending judicial review.

Since the opportunity for SPP Participants to appeal has long since passed, such a change is no longer of concern and that provision should be removed from the proposed tariff.

COMMENTS

P.U. Code section 311(g)(1) provides resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this resolution was mailed to parties for comments on April 14, 2014, and will be placed on the Commission's agenda no earlier than 30 days from today. For the full service list, see Attachment A.

FINDINGS

1. Station power load is the amount of electricity consumed by a generating facility.

2. Prior to the California Independent System Operator's (CAISO's) Station Power Protocol (SPP) tariff, customers who were on Southern California Edison Company's (SCE's) Station Power Self-Supply Schedule (Schedule SPSS) were provided service under the Otherwise Applicable Tariffs (OATs). The OATs were tariffs previously approved by the Commission as final rates. Station power load subject to the OATs was measured and determined by a well-established practice of 15-minute metering intervals.

3. Through the implementation of the CAISO SPP, CAISO introduced the monthly netting methodology and re-characterized the station power load as "On-Site Self-Supply", "Remote Self-Supply" and "Third Party Supply." CAISO exempted the "On-Site Self-Supply" portion from transmission access charges. CAISO, using wholesale prices, settled energy charges for the "On-Site Self-Supply" and the "Remote Self-Supply" portions of the station power load with the SPP Generators directly.

4. Pursuant to orders of the Federal Energy Regulatory Commission (FERC), SCE filed Advice Letter 2008-E-B on June 4, 2009, in which it sought approval of a revised Schedule SPSS (Original FERC-Required Tariff) with an effective date of June 1, 2006 and with rates subject to change pending the resolution of judicial review of FERC's SPP. Under the Original FERC-Required Tariff, some of the retail charges applicable to station power load of the SPP Generators were eliminated due to the monthly netting approach of the SPP.

5. On July 12, 2010, the Commission approved Advice Letter 2008-E-B with an effective date of June 1, 2006, with rates subject to change pending judicial review of FERC orders on SPP.

6. On May 4, 2010, the Court of Appeals for the District of Columbia Circuit vacated FERC's approval of CAISO's SPP tariff for FERC's acting in excess of its jurisdiction by determining when a retail sale occurred; and the D.C. Circuit Court remanded proceedings consistent with its opinion.

7. On August 30, 2010, FERC issued an Order on Remand and let the states determine their netting methodology for assessing state-jurisdictional retail charges.

8. SCE filed Advice Letter 2576-E-A to resume metering and charging rates in accordance with its final rates contained in the Otherwise Applicable Tariffs. Specifically, SCE requests approval to: (a) assess retail charges to station power load of the SPP Generators based on the well-established 15-minute metering interval; (b) pass through the exemption of the transmission charges for the "On-Site Self-Supply" portion of the station power load; make the rate effective from June 1, 2006; and (d) note that the rate, if approved, is subject to change if judicial review of the related FERC orders is granted.

9. Calpine Corporation (Calpine), NRG Energy, Western Powers Trading Forum (WPTF), High Desert Power Project LLC, Cogeneration Association of America jointly with the Energy Producers and Users Coalition (CAC/EPUC), and the Independent Energy Producers Association (IEP) all submitted timely protests, and SCE replied to the protests.

10. Energy Division mailed a Draft Resolution (Draft Resolution E-4532) on August 13, 2012. Comments on the August 13, 2012 Draft Resolution were timely submitted by SCE, Calpine, IEP, CAC/EPUC, and WPTF. SCE filed timely reply comments on September 5, 2012. This Resolution has taken into account the comments and reply comments on the August 13, 2012 Draft Resolution E-4532 even though that version of the draft resolution was withdrawn. IEP submitted comments untimely, but this resolution addresses their concern nonetheless.

11. The Advice Letter is an appropriate vehicle for determining the issues presented here because SCE's Original FERC-Required Tariff (former Schedule SPSS) was submitted for Commission approval through an Advice Letter filing.

12. Monthly netting does not result in a true measure of station power load supplied by the utility. It can zero out much of the power that was actually supplied by the responsible utility to meet the load of the generating facility.

13. The well-established regime of metering in accordance with the meter's 15-minute reporting interval – which pre-dated CAISO's SPP - is more

appropriate than the monthly netting methodology in determining the retail service provided by the responsible utility to serve station power needs.

14. The Commission rejects the argument from SPP Participants that 15-minute metering puts them at a competitive disadvantage vis-à-vis utility-owned generators. Participants misunderstand the fact that utility-owned generators operate under a ratemaking structure that is very different from merchant generators.

15. SCE must ensure that there is adequate supply on standby at all times, ready to serve the generator in case of an outage. This is a retail service for which SCE as the responsible LSE, must recover applicable retail charges for power supplied to the generating station.

16. The argument about retroactive ratemaking raised by some protestors lacks merit because the Commission's approval of the Original FERC-Required Tariff (former Schedule SPSS) did not set final rates but instead approved a tariff in an Advice Letter filing that was "subject to change pending judicial review" of the FERC orders requiring the Original FERC-Required Tariff. Approval of SCE's Advice Letter 2576-E-A would only *return* SPP generators to rates that were final before the Original FERC-Required Tariff.

17. Revised Schedule SPSS should be made effective on and after December 18, 2012, instead of SCE's requested effective date of June 1, 2006, because the issue was finally settled when on December 18, 2012, the D.C. Circuit Court of Appeals denied Calpine's appeal. It is reasonable to assume that at that point, generators on the CAISO's SPP tariff knew with certainty that they have to pay retail charges under SCE's otherwise applicable tariff and were pricing their power accordingly.

18. In the advice letter, SCE proposes to give a credit to SPP Generators for the wholesale energy charges they have already paid to the CAISO to resolve the double payment issue. To the extent that generators on the CAISO's SPP tariff paid wholesale energy charges to the CAISO, we authorize SCE to provide SPP generators a credit for those charges starting on December 18, 2012.

19. In re-billing SPP customers, SCE should provide the detail of the calculation necessary to determine how the back charges are determined.

20. SCE's Advice Letter 2576-E-A and proposed Schedule SPSS provide that the rates are subject to change pending judicial review. Such language is now unnecessary because the time frame for filing an appeal has long since passed. Such language should therefore be removed.

THEREFORE, IT IS ORDERED THAT:

1. This Resolution approves the proposed Schedule SPSS to authorize Southern California Edison Company to assess retail charges to SPP Generators' station power in accordance with the Otherwise Applicable Tariffs with the following modifications.

    a. Schedule SPSS shall be effective from December 18, 2012.
    b. SCE is authorized to provide SPP generators a credit for wholesale energy charges they paid to the CAISO from December 18, 2012 to the date of issuance of this resolution. SPP participants receiving a back bill have 90 days to show proof of the amount of wholesale energy charges they already paid to the CAISO to get the credit.

2. Within 30 days of the date of issuance of this resolution, SCE shall file a Tier 1 Advice Letter revising Proposed Schedule SPSS as approved herein, including:

    a. Making Schedule SPSS effective on and after December 18, 2012;

    b. Deleting all references to Schedule SPSS's effectiveness subject to judicial review; and

    c. Specifying which account would be used to flow the revenues received by SCE from SPP generators from December 18, 2012.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 15, 2014; the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director